IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

W.P.Nos.7472, 7469 and 10358 of 1990

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 7472 of 1990

Between:

1 Tiruvurangam Venkatanarasamma, W/o Sri T.Hygrivachari, Hnamakonda.
2 Kodakandla Singarachari, S/o. Lakshmanachari, Ippagudem (R/O), Warangal District.
3 Bakaraju Raghavaratnamma, W/o Rama Rao, R/o Warangal.

..... PETITIONER(S)

AND

1 Special Court A.P.Land Grabbing (Prohibition), Basheerbagh, Hyderabad.
2 Gandamala Ramulu, R/o Kummarapalli, Hanmakonda, Warangal District.
3 State of A.P. Rep. by the District Collector Warangal, Hyderabad. R3 is impleaded as per court order dt. 22.1.1991 in WPMP 21002/90

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other Writ or order or direction calling for the records

relating to the judgment L.G.C.No. 63/89 on the file of the Special court under Andhra Pradesh Land Grabbing (Prohibition) Act and quash the same.

Counsel for the Petitioner: MR.VILAS V.AFZULPURKAR

Counsel for the Respondent Nos1 and 3.: The Advocate General and GP FOR REVENUE

Counsel for Respondent No.2: Mr.J.Nataraja Sarma

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WRIT PETITION NO : 7469 of 1990

Between:

1 Bkaraju Raghava Ratnamma, W/o Ramarao,
R/o Warangal.
2 Turuvarangam Venkata Rama Narasamma, W/o Sri P.Hayagrivachari,
R/o Hanamakonda, Warangal District.
3 Kodakandla Singarachari, S/o Lakshmanachari,
R/o Ippaguda, Warangal District.

..... PETITIONER(S)

AND

1 The Special Court Under A.P., Land Grabbing (Prohibition) Act.
Basheerbagh, Hyderabad.
2 State of A.P., Rep. by its District Dollector,
Warangal.

3.Gandamala Ramulu, S/O.Veeraiah, R/o.Kummarapally,Hanamkonda, Warangal District.

(R3 is impleaded as per Court order dated 29.9.2004 in WPMP.No.32727 of 2001)

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of certiorari or any other Writ, order or direction calling for the records relating to the judgment i LGC.No.75/89 on the file of the Special Court Under Andhra Pradesh Land Grabbing (Prohibition) Act and quash the same.

Counsel for the Petitioner:MR.VILAS V.AFZULPURKAR

Counsel for the Respondent Nos1 and 2.:The Advocate General and GP FOR REVENUE

Counsel for Respondent No.3:Mr.J.Nataraja Sarma

A N D

WRIT PETITION NO : 10358 of 1990

Between:

1 Bkaraju Raghavaratnam, W/o Ramarao,
Resident of Warangal.
2 Turuvarangam Venkatrama Narsamma, W/o Sri P.Hayagrivachari,
Resident of Hanumakonda, Warangal.
3 Kondakandla Singarachari, S/o Lakshamanachari,
Resident of Ippaguda, Warangal District.

..... PETITIONER(S)

AND

1 The Special Court Under Andhra Pradesh Land Grabbing (Prohibition) Act, Bhasheerbag, Hyderabad.
2 The Collector, Warangal.

3 The Tahsildar, Warangal.
4 State of Andhra Pradesh, reptd., by the Collector,
Warangal.

5. Gandamala Ramulu, S/O.Veeraiah, R/o.Kummarapally,Hanamkonda, Warangal District.

(R5 is impleaded as per Court order dated 29.9.2004 in WPMP.No.32728 of 2001)

(Claim against R2 is Dismissed for default as per court order dt. 13.2.1998)

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other Writ, Order or Direction, calling for the records relating to the Judgment in L.G.C.No.64 of 1989 on the file of the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act and quash the same and pass

Counsel for the Petitioner:MR.VILAS V.AFZULPURKAR

Counsel for the Respondents1,3 and 4 : The Advocate General and

GP FOR REVENUE

Counsel respondent No.5 Mr.J.Nataraja Sarma

The Court made the following :

The Hon'ble Sri Justice B. Sudershan Reddy

a n d

The Hon'ble Sri Justice K.C. Bhanu

WRIT PETITION Nos. 7472, 7469 and 10358 OF 1990

COMMON ORDER: **(per Sri Justice K.C. Bhanu)**

These writ petitions are filed under Article 226 of the Constitution of India to issue a writ of Certiorari or any other writ order or direction calling for the records relating to the common judgment dated 8.5.1990 in L.G.C.Nos. 63, 64 and 75 of 1989 on the file of Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act (for short, 'the Act') and to quash the same as illegal and arbitrary.

The petitioners in W.P. 10358 of 1990 are the plaintiffs who filed a suit in O.S. 78 of 1974 on the file of Subordinate Judge, Warangal. The said suit was withdrawn by the District Judge, Warangal and renumbered as O.S. 25 of 1977 and again it was transferred to Sub-Court, Warangal and renumbered as O.S.108 of 1990. The said suit was withdrawn by the Special Court (District Judge) Warangal as L.G.C. 3 of 1988 and again it was withdrawn by the Special Court, Hyderabad after the same was constituted and it was renumbered as L.G.C. 64 of 1989.

W.P. 7472 of 1990 is filed by the respondents in O.P. 26

of 1983 under the Act on the file of Special Court (District Court) Warangal The said O.P. was withdrawn by the Special Court, Hyderabad and renumbered as L.G.C. 63 of 1989. The State of Andhra Pradesh filed O.P. 32 of 1983 before the Special Court, Warangal. On transfer, the same was renumbered as L.G.C. 75 of 1989 by the Special Court, Hyderabad. Aggrieved by the orders in the common judgment in L.G.Cs. 63, 64 and 75 of 1989, the plaintiffs in L.G.C. 64 of 1989 and the respondents in L.G.C. 63 and 75 of 1989 filed these three writ petitions.

Since the issue involved in all the three writ petitions is common and arise out of common judgment, all the writ petitions are being disposed of by this common order.

The brief facts that are necessary for the disposal of the present writ petitions may be stated as follows. For better appreciation of the facts, the parties are referred to as arrayed in the Special Court under the Act.

The plaintiffs in L.G.C. 64 of 1989 filed the suit stating that they are the purchasers of the land to an extent of 556 Sq. yards, Ac.3-35 guntas and Ac.10-02 guntas respectively from the 4th defendant therein forming part of S.No.898 through registered sale deeds and since then they have been in physical possession and enjoyment of the same. The defendants 1 to 3 therein claiming the lands purchased by them forming part of S.No.1066 of Hanamkonda and the entire land is denoted as a Shikam land. On enquiry the plaintiffs came to know that Balasamudram tank was breached and abandoned in the year 1945. During 1946 the Government vested the entire land in S.No. 1066 in the Hanamkonda Municipality for city

development. Therefore, the land in S.No. 1066 is no more a Government land and the same is borne out by revenue records. The plaintiffs also learnt that the extent of S.No.1066 Hanamkonda has been wrongly mentioned as Ac.133-22 guntas in the revenue records. After verification it came to light that old S.No.665 has been wrongly included in the present S.No.1066. At the time of sale it was represented to the plaintiffs by defendant No.4 that one Kaligopadi Mallaiah and his son Ramaiah were in possession of Ac.18-00 for more than 60 years as absolute owners. It is the further case of the plaintiffs that D-4 purchased the said land from K. Ramaiah and therefore he was reconveying the same to the plaintiffs. On further enquiry the plaintiffs came to know that Mallaiah and his predecessors were in occupation and enjoyment of Ac.18-00 of land in old S.No. 665 from times immemorial. It is also stated that Nazim Smith, Telangana through his order dated 17th Aban, 1335 F in File No. 9-10/1335 F assigned the patta of this land to the said Mallaiah and upon spot inspection report the Nazim had found that the extent of Ac.18-00 was deleted from the present extent of S.No.898 and he also further observed that it was wrongly included in the present S.No.1066. Therefore, in the assignment order it was directed that Mallaiah is entitled to permanent occupancy rights over Ac.18-00 of land. The said officer also gave directions to give separate survey number to an extent of Ac.18-00. But the Revenue Officers did not make necessary rectifications. The result is that in the records wrong entries were carried out from year to year. The defendant No.4 after obtaining permission from the Municipality for laying out the site sold several plots to different persons including the plaintiff No.1. The defendants are, therefore, estopped by conduct, acquiescence and

by record from claiming the plaint schedule land as Shikam land. The plaintiffs are bona fide purchasers for value from the ostensible owner without notice of the claim of the Government and they have invested huge amounts for the improvement of the land and constructed compound wall and paying land revenue to the Government and the property tax to the Municipality. Hence the suit.

The 1st defendant filed written statement stating that the plaintiffs' possession is illegal. The land admeasuring Ac.133-22 guntas was a tank bed land of Balasamudram tank and the same was made over to the Municipal authorities in 1946 for extension of Abadi. The Municipality has utilized only Ac.111-11¾ guntas and the remaining area of Ac.22-10¼ guntas which includes the suit land continued to be the Government land. The plaintiffs are put to strict proof of their allegation that K. Mallaiah or his alleged son Ramaiah was ever in possession of Ac.18-00 of land forming part of old S.No. 665 and the truth, validity and binding nature of the assignment in favour of Mallaiah. The alleged uninterrupted possession of Mallaiah and Ramaiah over an extent of Ac.18-00 is not true. The purchase of land by D-4, evidenced by the sale deed dated 24.7.1961, omits to mention the survey number of the land purchased, but the boundaries fall within S.No. 1066. The Municipal authorities wrongly sanctioned the lay out in 1965 at the instance of D-4 being misled by his wrong representation. When the facts came to light, the said sanction was cancelled by the Government in G.O.Ms.No. 298, MA dated 21.4.1970. The said cancellation order has not been challenged. The plaint schedule land remains to be the property of the Government. The plea of estoppel is untenable. The claim of

plaintiffs that they have perfected the title to the property by prescription is unfounded. Therefore, the 1st defendant prayed to dismiss the suit.

Defendants 2 and 3 have filed a memo adopting the written statement filed by D-1, but D-4 filed a written statement stating that K. Ramaiah alienated to this defendant under two sale deeds to an extent of Ac.20-18 guntas and they formed part of S.No.898 Hanamkonda. The Subordinate Officers instead of giving separate survey numbers for the reduced area from old S.No.665 as directed by Nazim Zamabandi Simth, by mistake included it in present S.No.1066. In spite of this mistake in the revision survey Kaligopidi Ramaiah and his father have been in absolute and uninterrupted possession for more than Ac.18-00 of land forming part of old S.No.665. Hence, he has no objection for decree of the suit.

The following issues have been framed for trial:

1. Whethe the suit land form part of S.No.898 as alleged by the plaintiff?
2. Whether the plaintiffs are bona fide purchasers for value without notice?
3. Whether the vendors of the suit land were having title to the suit land?
4. Whether the plaintiffs are entitled to improvements?
5. Whether the suit is properly valued and court fee paid sufficient?
6. Whether the title of the plaintiffs have become perfect by prescription?
7. Whether the proceedings under the Land

Encroachment Act are legal and valid?

8. Whether the suit under Order 1 Rule 8 CPC is maintainable?

9. To what relief?"

After recording of evidence on behalf of both the plaintiffs and the defendants, one G. Ramulu (2nd respondent in W.P. 7472 of 1990) filed a petition under Order I Rule 10 CPC claiming that he may be impleaded as a defendant in the suit stating that the suit land was Government land and he himself and others have applied for allotment of the suit land by way of house sites. The said application was dismissed by the Subordinate Judge. In the meanwhile, the A.P. Land Grabbing (Prohibition) Act, 1982 came into force. Then the said G.Ramulu filed I.A. 147 of 1983 under Section 8(8) of the Act requesting the Subordinate Judge to stay all further proceedings in the suit and transmit the record to the Special Court Warangal, but the said application was dismissed. At that stage, he filed O.P. 26 of 1983 before the Special Court, Warangal for eviction of the respondents i.e. the petitioners in these writ petitions as land grabbers and to evict them from the schedule land. It is stated in the said petition that the land in question is a shikam land and an extent of Ac.133-22 guntas in S.No.1066 is Balasamudram tank bed land and no part of the tank bed land had ever been granted or assigned to any individual at any point of time by the Government.

The allegations in O.P. 32 of 1983 filed by the Government against the defendants in O.S. 78 of 1974 are the same as the allegations made by the Government in the written statement

filed in O.S. 78 of 1974.

The following points have been framed in L.G.Cs.63 of 1989 and 75 of 1989:

LGC 63/1989:

1. Whether the Government is the owner of the application schedule property;
2. If so, whether the respondents are not land grabbers;
3. Whether the claim of the applicant is barred by limitation;
4. To what relief;

LGC 75/1989:

1. Whether the Government is the owner of the application schedule property;
2. If so, whether the respondents are not land grabbers;
3. Whether the claim of the applicant is barred by limitation;
4. To what relief?

In L.G.C. 64 of 1989, on behalf of the applicants 7 witnesses were examined and 52 documents were marked. On behalf of the respondents 4 witnesses were examined and 52 documents were marked. Ex.X-1 was also marked through PW-3 besides Exs.C-1 and C-2. On behalf of the applicants in LGC 63 of 1989, 3 witnesses were examined and 24 documents were marked. No evidence was let in on behalf of the respondents therein. On

behalf of the applicants in LGC 75 of 1989, one witnesses was examined and one documents was marked. No oral or documentary was let in on behalf of the respondents therein.

Upon an elaborate consideration of the evidence on record, the Special Court found that the Government still continues to be the owner of the property and the plaintiffs in O.S. 78 OF 1974 are not bona fide purchasers and they make improvements at their own risk without any title to the property and the land was grabbed by defendant No.4 and therefore the plaintiffs in O.S. 78 of 1974 and the respondents 3, 4 and 5 in LGC 63 of 1989 are land grabbers, and accordingly ordered for eviction from the suit schedule property. Accordingly, LGC 64 of 1989 was dismissed and L.G.Cs. 63 and 75 of 1989 are allowed.

In these writ petitions, the learned counsel for the petitioners Sri Vilas V. Afzul Purkar contended that originally one K. Ramaiah is the owner to an extent of Ac.18-00 in old S.No. 665 and D-4 purchased the land from him and there upon D-4 sold the same under various sale deeds to the petitioners and the possession of K. Ramaiah was recognized even by Nazim Simth as early as in the year 1925 and Ex.B-18 is the document which shows about the possession of the property by the predecessors of the plaintiffs. He further contended that the conclusions reached by the Special Judge are not based upon any evidence; that the Special Court on erroneous conclusion gave a finding that Ex.B-18 is a fabricated document event though no challenge has been made; that the petitioners perfected their title by adverse possession and the land in question was vested with the Warangal Municipality and now under

Exs.B-1 to B-3 the Government cannot be the owner of the property; that the land revenue receipts filed on behalf of the petitioners right from the year 1965 to 1980 show about the exclusive possession of the property and prior that D-4 was in possession of the property and before that his predecessor-in-title had been in continuous possession and enjoyment of the property. The learned counsel made a feeble attempt that the Government is estopped from contending that the Government assigned the land to the Municipality and the Municipality sanctioned the lay-out. He also contended that an extent of Ac.18-00 was wrongly included in S.No.1066 and both oral and documentary evidence adduced on behalf of the petitioners clinchingly prove their case and they are in possession and enjoyment of the property through a purchase made under sale deeds. Hence, he prays to set aside the findings of the trial court and allow the writ petitions.

The learned Advocate General contended that the petitioners cannot derive any title from D-4 who claims to have purchased the same from K. Ramaiah who has no title over the property and Ex.B-18 cannot be believed as true and the possession if any of the plaintiffs is an illegal possession after 1961. The suit is filed in the year 1974. Therefore, the question of adverse possession does not arise. Originally the Government made over the land to the Municipality to an extent of Ac.133-22 guntas for development but the Municipality could not utilize the entire extent. The present extent remains with the Government and therefore the Government is the title holder of the land as the same is classified as Shikam land. Upon elaborate consideration of the matter the Special Court gave findings which are not perverse and on the other hand the findings are based

upon proper appreciation of the evidence on record and therefore there are absolutely no grounds to interfere with the impugned common judgment.

Sri Nataraja Sarma, learned counsel appearing for the 2nd respondent in W.P. 7472 of 1990 contended that the land in question is a Government land; that K. Ramaiah has no title to the property; that Ex.B-18 is a fabricated document; that if an extent of Ac.18-00 was wrongly included in S.No.1066, the same is not rectified as on today; that the land in S.No.1066 admittedly is a shikam land vested with the Government and that Ex.B-18 is not even filed along with the suit; that a bare reading of Ex.B-18 would indicate that it is false document because an appeal will not lie to Sadar Nazim against the order of the District Collector but it only lies to the Government and the official who is said to have been issued this document in not in existence in view of enactment called Hyderabad Revenue Act, which came into force from 1908 and Ex.B-18 is brought into existence after the law is codified and there is no law like Sadar Nazim and that after elaborate consideration of the case the Special Court gave findings which are based upon proper appreciation of the evidence on record. Hence, he prays to dismiss the writ petitions filed by the petitioners.

It is not in dispute that this court while exercising the jurisdiction under Article 226 of the Constitution of India can interfere with the judgments of the Subordinate Courts and the Tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard to the provisions of the law and (2) a grave injustice or

gross miscarriage has occasioned thereby. It is also well settled that while exercising the power of Certiorari this court is more concerned with the decision making process and to test the same on the grounds of illegality, irrationality or procedural impropriety.

The claim of the petitioners is that they are the absolute owners of an extent of Ac.11-17 guntas (Item No.1 of suit schedule) and Ac.6-07 guntas (Item No.2 of the suit schedule) of land, totalling Ac.17-24 guntas forming part of old S.No.665, new S.No.898. It is their case that an extent of Ac.18-00 was wrongly included in S.No.1066. It is their further case that K. Mallaiah was in occupation of Ac.18-00 of land in old S.No.665 from times immemorial. It is also their case that Nazim Simth Telangana under Ex.B-18 directed patta to Mysiah and deleted Ac.18-00 from new S.No.898. The defendant No.4 claims to have purchased the land from K. Ramaiah s/o Mallaiah under Ex.B-15 sale deed dated 22.7.1961. Exs.B-16 and B-17 are the rectification deeds. The 1st plaintiff seems to have purchased 556 Sq. yards under Ex.A-3 sale deed dated 26.8.1965. The 2nd plaintiff purchased Ac.4-05 guntas under sale deed Ex.A-5 dated 9.8.1965 and also Ac.5-37 guntas under Ex.A-6 sale deed dated 31.8.1965 whereas the 3rd plaintiff purchased Ac.3-35 guntas under Ex.A-7 sale deed dated 28.9.1965. Defendant No.4 claims to have purchased under Ex.B-15 sale deed dated 22-7-1961 an extent of Ac.12-20 guntas of land. The said document does not contain any survey number. It does not also contain how the vendor got Ac.12-20 guntas of land. The sale deed under Ex.B-16 was executed by the vendor Kalegopida Ramanna and this document also does not show how the vendor got the property. Therefore, the title of K. Ramaiah in

respect of the present extent of land as claimed by the petitioners is in serious dispute. Neither the petitioners in these writ petitions nor their vendor get a better title unless the vendor under Ex.B-15 is having a right title and interest in the property.

The main truncard of the petitioners is Ex.B-18, which according to them is the order passed by Sadar Nazim, Revenue Department, Telangana Circle, Government of Hyderabad dated 10th Abban 1335 Fasli i.e. 10th September 1924. A close reading of this document shows that on appeal from District Warangal Subedari dated 10th Abban 1335 The Sadar Nazim inspected the land in dispute personally. On verification of old village map, it is found that old S.No.665 of Padmakshi Gutta comprised of 95 acres 26 guntas. In revision this number has been altered into 898 and its extent has been shown as 78 acres 03 guntas. The remaining land measuring 17 acres 23 guntas appears to have been left out for being given separate number. Because of inadvertence of the Settlement Department separate number was not given for the said land. The land in the possession of the petitioner as not submerged and therefore it cannot be treated as part of Balasamudram tank bed land. Therefore, the petitioner is entitled for the patta and accordingly the patta is sanctioned for this land in the name of the applicant as per his application and the name of his son will be entered as a Shikwidar and accordingly instructions were given to the Subordinate Officers for the formation of a separate number and grant of patta and accordingly to inform the applicant informed that he can enjoy the property in perpetuity. Under Ex.B-18 the Collector was directed to

issue a patta in the name of K. Mallaiah and the name of his son K. Ramanna may be entered as Shikwidar. According to the findings given by the trial court, this Ex.B-18 is a fabricated document by the petitioners. The reasons given by the Special Court were that either Mallaiah or his son Ramanna did not take steps for rectification of mistakes as pointed under Ex.B-18 and if it is a genuine document the names of those persons would have been recorded as pattadars. So also the plaintiffs and their predecessors in title did not take any interest to mutate their names in the revenue records as pattadars. The said reasoning is not perverse.

The Hyderabad Land Revenue Act 1908 came into force from 1st Azur, 1318 Fasli. As rightly pointed out by the learned counsel Mr. Nataraja Sarma, there is no authority like Sadar Nazim Simth in the said Act. According to Section 158(2) of the Hyderabad Land Revenue Act, an appeal shall lie to the Government from any decision or order passed by the Subedar or Commissioner for Survey and Settlement or Commissioner of Land Revenue. Under Section 54(1) of the said Act, if any person is desirous of taking unoccupied land he shall before occupying the land submit a petition to the Tahsildar and obtain his permission in writing. Such permission was not obtained by K. Mallaiah and no record is filed to show that before occupying the land he made an application to the Tahsildar. In any view of the matter, the Sadar Nazim Simth is not the authority to grant patta. It is the Collector who has to issue the patta in pursuance of Ex.B-18 proceedings if at all it is a genuine document. There are no contemporaneous proceedings to show that K. Mallaiah was given patta. Ex.B-18 does not indicate since how long Mallaiah was in

possession and enjoyment of the property. What are the documents referred to in arriving to the conclusion that the land inspected by the alleged Sadar Nazim Simth forms part of S.No.898 or old S.No.665 of Padmakshi Gutta is not clear. As seen from the documents, basing on the village map the Sadar Nazim Simth came to the conclusion that an extent of Ac.17-23 guntas appears to have been left out for giving separate number. As seen from the Hyderabad Land Revenue Act, for shifting of patta the said application has to be given to the Revenue Officer who after making enquiries will issue patta. Aggrieved by the orders passed by such Enquiry Officer, an appeal shall lie to the District Collector and against the orders passed by the District Collector an appeal shall lie to the Government of Hyderabad but not to the Sadar Nazim. As stated in Ex.B-19, it is contended that the truth or otherwise of Ex.B-18 has not been challenged but unfortunately the Special Court gave a finding that it is a fabricated document but it is nobody's case that it is a certified true copy issued by the competent authority and therefore it is admissible.

Mr. Vilas V. Afzul Purkar contended that under Section 79 of the Evidence Act any document purporting to be a certified copy which is by law declared to be admissible in evidence of any particular fact and which purports to be duly certified by an officer, the court shall presume that such document purports to be signed or certified. For that proposition, he relied upon a decision of the Supreme Court in **M/s. Sodhi Transport Co. v. State of U.P.** wherein it is held:

> "14. A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule

> concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances".

There is no doubt that the presumption under the said provision that 'document itself is genuine' includes a presumption that the signature and the seal are also genuine. Further, Section 79 of the Evidence Act applies only to certificates, certified copies or other documents certified by proper officers or by officers duly authorized. But there is no such evidence to show that the person who issued Ex.B-18 is the competent authority to issue certified copies. Defendant No.4 is examined as DW-2. According to him, he purchased Ac.7-38 guntas in the year 1961 and Ac.12-20 guntas in the year 1964 from K. Ramanna. He did not give any explanation as to why there is no mention in Exs.B-15 and B-16 sale deeds about

Ex.B-18. Therefore, Ex.B-18 appears to be not a genuine document on the face of it. Simply because the genuineness of Ex.B-18 is not challenged or not put to an issue, that does not mean it has to be acted upon. On the face of Ex.B-18, it appears to have been pressed into service to suit the case of the plaintiffs. Even if Ex.B-18 is a true and correct document, still it does not give any title to the vendor of defendant No.4 i.e. Ramanna. Therefore, this document cannot be used for any other purpose for proving the right, title and interest. If this document is eschewed from consideration, it can be safely held that Ramanna has not title to the property and therefore his sale in favour defendant No.4 under Exs.B-15 and B-16 who in turn sold the properties to the plaintiffs under Exs.B-1 to B-4, they cannot get any title.

The further claim of the petitioners in these writ petitions is prescription of title and adverse possession. Article 65 of the Schedule to the Limitation Act 1963 prescribes that for possession of immovable property or any interest thereon based on title, the limitation of 12 years begins to run from the date of the defendants' interest becomes adverse to the plaintiff; in the case of the Government, it is 30 years. Adverse possession means a hostile possession, a possession which is expressly or impliedly in denial of title of the true owner. It is settled law that a person who possess his title on adverse possession must show by clear and unequivocal evidence that is his possession hostile to the real owner and amounts to denial of his title to the property claimed. It is also equally settled that in order to claim acquisition of title by adverse possession, the same must be hostile at its inception and the possession in order to be adverse must be continuous, hostile and

open to the knowledge of the true owner.

Originally the writ petitioners filed the suit on 13.12.1974. Admittedly the Warangal Municipality is not arrayed as a party to any of these proceedings. Therefore, the adverse possession in respect of 12 years against the Municipality cannot be claimed by the petitioners. According to the Government, the land continues to be in their possession. Under Ex.B-1 the Government assigned Ac.133-22 guntas to the Municipality for future development of new colonies. As per Ex.B-3 proceedings, a part of the land in S.No.1066 was unoccupied by the Municipality and therefore the institution of land acquisition proceedings does not arise. According to the stand of the Government, the disputed extent is not utilized for development by the Municipality and the title remains with the Government. According to defendant No.4, the plaintiffs 2 to 4 encroached into the Government land in S.No.1066 of Hanamkonda, therefore he issued Ex.A-4 notice. According to PW-1 in LGC 63 of 1989, the entire land in S.No.1066 is a Government land and the extent of Ac.133-22 guntas is assigned as local fund and Sarkari patta. According to PW-2 in L.G.C. 63 of 1989, the entry in the field area irregularly registered and the land is shown as Balasamudram Sikam. It based the old S.No.746.

Now it has to be seen whether the possession of the plaintiffs and their predecessor-in-title is adverse possession insofar as the Government is concerned?

The writ petitioners in WP 10358 of 1990 filed certain land revenue receipts relating to the period 1965 to 1980, in particular, Exs.A-32 to A-51, said to have been paid by the petitioners 2 and 3

from 1965 to 1980. Exs.A19 and A-20 are the land revenue receipts of 2nd petitioner for the years 1971 to 1974; Exs.A-21 and A-22 are the land revenue receipts in respect of petitioner No.3 for the years 1971 to 1974 whereas Exs.A-25 to A-29 are the property tax receipts for the years 1965, 1967 to 1970 and 1970 and 1975. These documents at best show about the possession of the plaintiffs from the year 1965 onwards whereas the suit is filed in the year 1974. Therefore, the question of prescription of title by adverse possession does not arise at all.

Insofar as Exs.B-4 to B-7 which are the land revenue receipts said to have been paid by Ex.D-5 are concerned, they do not contain any survey number. Therefore, these documents cannot be used as evidence of possession by defendant No.5. The other document on which the learned counsel for the petitioners relies is Ex.B-18 wherein the said Ramanna is said to have been in possession of the property. It does not indicate from which year to which year he has been in possession and enjoyment of the property. It does not contain any boundaries. Even assuming for a moment that K. Mallaiah was in possession of the property in the year 1924, there is absolutely no evidence to show about the possession of K.Mallaiah in pursuance of the orders in Ex.B-18. Therefore, the question that the writ petitioners in W.P.10358 of 1990 have got prescription of title by adverse possession does not arise as the petitioners miserably failed to prove their continuous and uninterrupted possession from 1924 to 1964, that is the date of purchase they have made under Exs.A-5, A-6 and A-7.

With regard to the deletion of Ac.18-00 of land from S.No.898 and a wrong inclusion in S.No.1066, there is no mention in the plaint about the old survey number of Balasamudram. The extent of land which according to the petitioners formed part of hillock Padmakshi Gutta is in S.No.898 corresponding to old No.665. But, in the evidence of PW-2 for the first time it is stated that old S.No. of Balasamudram is 616/3 and the extent is Ac.116-00. But, according to the Government, with regard to the extent as mentioned in the revenue records, both old and new survey numbers, there is no mistake or dispute in respect of Padmakshi Gutta. But the writ petitioners did not place any documentary evidence to show that the land popularly known as Padmakshi Gutta for which they claimed property as belonging to them situated in S.No.616/3 corresponding to the present S.No.1066. On the other hand, the Government placed on record both oral and documentary evidence to show that the case set up by the plaintiffs is false and as per the revenue records the total extent of land in S.No. 1066 is Ac.133-22 guntas but not Ac.160-00 as claimed by the plaintiffs. From the pahani patrikas of Hanamkonda village for the years 1972-73, 1973-74, 1974-75 and the land revenue receipts for the year 1971 it is established beyond doubt that there is no old S.No.616/3 and the old S.No. of Balasamudram Tank is only 746 but not 616/3 and the total extent covered under old S.No.746 is Ac.199-16 guntas and the present extent of S.No.1066 is Ac.133-22 guntas. Therefore, the question of deleting Ac.18-00 from S.No.898 and a wrong inclusion in S.No.1066 does not arise. There is no contemporaneous evidence adduced on behalf of the writ petitioners to show that an extent of Ac.18-00 of land of Padmakshi Gutta is deleted from S.No.898 and the same is

included in S.No.1066.

Now with regard to the land grabbing, learned counsel for the petitioners relied upon a decision of the Supreme Court in **G.Satya Reddi v. Government of Andhra Pradesh** wherein it is held "the grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement".

Basing on the said ratio, it has to be seen whether the petitioners are the land grabbers within the meaning of Section 2(d) and (c) of the Act?

The Government as well as the petitioner in L.G.C. 63 of 1989 are seriously disputing about the existence of K. Ramanna from whom defendant No.4 is alleged to have purchased the schedule property. A specific plea has been taken by the petitioner in LGC 63 of 1989 stating that K. Ramaiah is neither the executant nor concerned with the land in any manner whatsoever and on the basis of which the name of K. Ramaiah is set up as the sole heir of said Mallaiah and two registered sale deeds were brought into existence in the name of the 1st respondent purporting to have been executed by the said Ramaiah. Therefore, heavy burden is cast upon the writ petitioners to prove about the execution of Exs.B-15 and B-16 in favour of defendant No. 4. After comparison of thumb impressions under Exs.B-15 and B-16 by the Special Court, they do not tally with each other. The said Ramanna who is shown as 5th defendant is not examined. With regard to this aspect, Ramanna who is the vendor of defendant No.4 is added as defendant No.5 and D-5 engaged an

advocate and D-5 is alleged to have signed on the Vakalat which is marked as Ex.C-1. Subsequently the advocate reported no instructions and later some other advocate filed vakalat on behalf of D-5 which contain the thumb impression of K.Ramaiah, which is marked as Ex.C-2. In the petition accompanying the affidavit to receive the written statement, D-5 claims to have signed and further when the advocate-commissioner is appointed to record the evidence of D-5, he could not be examined due to Paralysis. The Commissioner who was appointed to record the evidence of D-5 returned the warrant. There is no evidence to show that D-5 was bedridden due to Paralysis. So, these circumstances clearly indicate that some other persons impersonated K. Ramaiah or Ramaiah and executed Exs.B-15 and B-16. The said finding of fact cannot be said to be perverse or not based upon any material on record. The Special Court came to the conclusion that none of the attestors or scribes of Exs.B-15 and B-16 is examined and no explanation is forthcoming on behalf of the writ petitioners as to why they could not be in a position to examine the attestors or scribes of Exs.B-15 and B-16. Therefore, basing on the evidence on record, the learned Special Court gave a finding that the evidence placed on record conclusively established that K. Ramaiah or Ramanna to whom a reference has been made in Ex.B-18 is not the person who executed Exs.B-15 and B-16. As no such person was in existence, D-5 was not produced either before the court or before the Commissioner. Therefore, even though the petitioners claim to have purchased the property under sale deeds, but their possession cannot be said to be legal. They illegally trespassed into the lands in question under the guise of sale deeds obtained by them and occupied and constructed

compound wall and some structures. Under no stretch of imagination they can be said to be bona fide purchasers. All the documents appear to have been pressed into service for the purpose of entering into the disputed site in question. If really the petitioners are the bona fide purchasers, they could have as well obtained the link documents from the vendor. Admittedly there was no mention how the vendor of the writ petitioners got right, title and interest in the property. The theory of deletion from Padmakshi Gutta and adding of the schedule land in S.No.1066 is only a camouflage so as to legalize their possession after purchase. Therefore, from the evidence it is clear that the petitioners grabbed the land of the Government by creating documents.

With regard to the application of promissory estoppel, learned counsel for the petitioners relied upon a decision of the apex court in **State of Punjab v. Nestle India Ltd**. wherein the wellknown preconditions for the operation of the doctrine of promissory estoppel are reiterated as follows:

> " (1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee;
>
> (2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise".

There is no dispute about the law laid down by the apex court with regard to the application of promissory estoppel. The Government by conduct can make any promise, either contractual or administrative or statutory. The basis for the argument is Ex.B-18. As

the said document appears to be pressed into service for the purpose of this case, the principle of promissory estoppel cannot be made applicable for the present facts of the case. There is no evidence to show that the so-called possession of Mallaiah as per Ex.B-18 is the self-same land claimed by the writ petitioners. By misleading the Municipality, D-4 obtained sanction of lay-out plan in the year 1965. Simply because the Municipality has granted permission in sanctioning the lay-out, it does not mean it is a promissory estoppel. There is no doubt that the sanction of lay-out was cancelled by the Government in G.O.Ms.No.298 MA dated 21.4.1970. The said Government Order has become final as the same is not challenged by D-4 in appropriate proceedings.

To test the findings given by the Tribunal and to know whether the findings are based upon proper appreciation of the evidence on record, this court thoroughly evaluated the facts. After perusing the evaluation and scrutinizing the evidence on record, we are of the considered view that the Special Court did not commit any error or gave any perverse finding. So also, from the findings it can safely be said that they are based upon proper appreciation of the evidence on record. The judgment under challenge in these proceedings does not suffer from any incurable legal infirmities or errors much less errors apparent on the face of the record so as to call for interference by this court. The writ petitioners made a speculative claim in order to grab the Government property. There are absolutely no grounds to interfere with the impugned common judgment.

Accordingly all the three writ petitions are dismissed. In

the circumstances, no order as to costs.

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B. Sudershan Reddy, J.

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K.C. Bhanu, J.

Date: --09—2004.

MVB.

..... REGISTRAR

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SECTION OFFICER

To

1 The Special Court Under Andhra Pradesh Land Grabbing (Prohibition) Act, Bhasheerbag, Hyderabad.
2 The District Collector, Warangal.

3. The Tahsildar, Warangal.

4. 2CCs to Government Pleader for Revenue, High Court Buildings,

Hyderabad. (O.U.T).

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